



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Civil Liberties, Justice and Home Affairs

2008/0242(COD)

10.12.2010

AMENDMENTS 20 - 47

Draft report
Monica Luisa Macovei
(PE450.875v01-00)

on the amended proposal for a regulation of the European Parliament and of the Council on the establishment of 'EURODAC' for the comparison of fingerprints for the effective application of Regulation (EC) No [...] [establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person] (recast)

Proposal for a regulation
(COM(2010)0555 – C7-0319/2010 – 2008/0242(COD))

AM_Com_LegReport

Amendment 20
Claude Moraes

Proposal for a regulation
Draft legislative resolution – paragraph 2

Draft legislative resolution

Amendment

2. Calls on the Commission further to explore the possibility of Member States' designated authorities and the European Police Office (Europol) to request the comparison of fingerprint data - on a hit/no hit basis - with those stored in the EURODAC central database for the purposes of the prevention, detection and investigation of terrorist offences and other serious criminal offences; *deleted*

Or. en

Justification

Given the purpose limitation of the instrument, it is not appropriate for the Commission to explore law enforcement access to Eurodac. In any case, such access would constitute a serious interference with the right to the protection of personal data. It would also create heavy and arguably disproportionate costs at national and EU level.

Amendment 21
Cornelis de Jong

Proposal for a regulation
Draft legislative resolution – paragraph 2

Draft legislative resolution

Amendment

2. Calls on the Commission further to explore the possibility of Member States' designated authorities and the European Police Office (Europol) to request the comparison of fingerprint data -on a *deleted*

hit/no hit basis- with those stored in the EURODAC central database for the purposes of the prevention, detection and investigation of terrorist offences and other serious criminal offences;

Or. en

Amendment 22
Sophia in 't Veld, Sarah Ludford, Renate Weber

Proposal for a regulation
Draft legislative resolution – paragraph 2

Draft legislative resolution

Amendment

2. Calls on the Commission further to explore the possibility of Member States' designated authorities and the European Police Office (Europol) to request the comparison of fingerprint data -on a hit/no hit basis- with those stored in the EURODAC central database for the purposes of the prevention, detection and investigation of terrorist offences and other serious criminal offences; *deleted*

Or. en

Justification

Given the purpose limitation of the instrument, it is not appropriate for the Commission to explore law enforcement access to Eurodac. In any case, such access would constitute a serious interference with the right to the protection of personal data. It would also create heavy and arguably disproportionate costs at national and EU level.

Amendment 23
Sophia in 't Veld, Sarah Ludford, Renate Weber

Proposal for a regulation
Draft legislative resolution – paragraph 2 a (new)

Draft legislative resolution

Amendment

2a. Calls on the Commission to reaffirm the principles laid down in Article 6 of Directive 95/46/EC of the European Parliament and of the Council¹, which require, inter alia, that data be collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes and that data be kept for no longer than required for processing in connection with those purposes, and that those principles will also apply to Eurodac in the future.

Or. en

Justification

Self-explanatory in the light of suggestions for access by law enforcement agencies.

Amendment 24
Claude Moraes

Proposal for a regulation
Draft legislative resolution – paragraph 2 a (new)

Draft legislative resolution

Amendment

2a. Calls on the Commission to reaffirm the principles laid down in Article 6 of Directive 95/46/EC of the European Parliament and of the Council², which require, inter alia, that data be collected for specified, explicit and legitimate

¹ *OJ L 281, 23.11.1995, p. 31.*

² *OJ L 281, 23.11.1995, p. 31.*

purposes and not further processed in a way incompatible with those purposes and that data be kept for no longer than required for processing in connection with those purposes, and that those principles will also apply to Eurodac in the future.

Or. en

Justification

Self-explanatory in the light of suggestions for access by law enforcement agencies.

Amendment 25
Georgios Papanikolaou

Proposal for a regulation
Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) Member States should take every step to ensure a good quality of fingerprints. For that purpose, all authorities with right of access to Eurodac should invest in adequate training for their staff and provide them with the necessary technological equipment. The authorities with right of access to Eurodac should share with the Management Authority the specific difficulties they identify with regard to the quality of data, in order to come to common solutions.

Or. en

Amendment 26
Andreas Mölzer

Proposal for a regulation
Recital 12

Text proposed by the Commission

12. Third country nationals or stateless persons who have requested international protection in one Member State may have the option of requesting international protection in another Member State for many years to come. Therefore, the maximum period during which fingerprint data should be kept by the Central System should be of considerable length. ***Given that most third country nationals or stateless persons who have stayed in the European Union for several years will have obtained a settled status or even citizenship of a Member State after that period***, a period of ten years should be considered a reasonable period for the conservation of fingerprint data.

Amendment

12. Third country nationals or stateless persons who have requested international protection in one Member State may have the option of requesting international protection in another Member State for many years to come. Therefore, the maximum period during which fingerprint data should be kept by the Central System should be of considerable length. A period of ten years should be considered a reasonable period for the conservation of fingerprint data.

Or. de

Justification

There is no basis for assuming that most third country nationals or stateless persons will have obtained a settled status or citizenship after a given period. Accordingly, there is no need to deal with this matter here, and it should be left entirely to the discretion of the Member States.

Amendment 27
Sarah Ludford

Proposal for a regulation
Recital 21

Text proposed by the Commission

(21) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data²¹ applies to the processing of personal data by Union institutions, bodies, offices and agencies

Amendment

(21) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data²¹ applies to the processing of personal data by Union institutions, bodies, offices and agencies

carried out in application of this Regulation. However, certain points should be clarified in respect of the responsibility for the processing of data and of the supervision of data protection.

carried out in application of this Regulation. However, certain points should be clarified in respect of the responsibility for the processing of data and of the supervision of data protection, ***bearing in mind that data protection is a key factor in the successful operation of Eurodac and that data security, high technical quality and lawfulness of consultation are essential to ensure the smooth and proper functioning not only of Eurodac but of the whole Dublin system.***

Or. en

Amendment 28
Jan Mulder

Proposal for a regulation
Recital 23

Text proposed by the Commission

(23) It is appropriate to monitor and evaluate the performance of EURODAC ***at regular intervals.***

Amendment

(23) It is appropriate to monitor and evaluate the performance of EURODAC ***annually.***

Or. en

Amendment 29
Andreas Mölzer

Proposal for a regulation
Article 2 – paragraph 1 – point c – subpoint ii

Text proposed by the Commission

(ii) in relation to a person covered by Article 11, the Member State which transmits the personal data to the Central System;

Amendment

(ii) in relation to a person covered by Article 11, the Member State which transmits the personal data to the Central System ***and receives the results of the comparison;***

Or. de

Amendment 30
Sarah Ludford, Renate Weber

Proposal for a regulation
Article 3 – paragraph 5

Text proposed by the Commission

5. The procedure for taking fingerprints shall be determined and applied in accordance with the national practice of the Member State concerned and in accordance with the safeguards laid down in the Charter of Fundamental Rights of the European Union, in the Convention for the Protection of Human Rights and Fundamental Freedoms and in the United Nations Convention on the Rights of the Child.

Amendment

5. The procedure for taking fingerprints shall be determined and applied in accordance with the national practice of the Member State concerned and in accordance with the safeguards laid down in the Charter of Fundamental Rights of the European Union, in the Convention for the Protection of Human Rights and Fundamental Freedoms and in the United Nations Convention on the Rights of the Child ***and with regard to the fact that the best interests of children shall be the primary consideration of Member States in the application of this Regulation.***

Or. en

Justification

This amendment brings this Regulation in line with the Directive on minimum standards on procedures in Member States for granting and withdrawing international protection which specifies that the best interests of the child should be a primary consideration when implementing the Regulation. Also the EDPS in its 2008-2009 Activity Report highlighted the rights of persons subjected to age evaluations.

Amendment 31
Andreas Mölzer

Proposal for a regulation
Article 6 – paragraph 2

Text proposed by the Commission

2. By way of derogation from paragraph 1, where it is not possible to take the fingerprints of an applicant on account of measures taken to ensure the health of the applicant or the protection of public health, Member States shall take and send the

Amendment

2. By way of derogation from paragraph 1, where it is not possible to take the fingerprints of an applicant on account of measures taken to ensure the health of the applicant or the protection of public health ***or for technical reasons***, Member States

fingerprints of the applicant as soon as possible and no later than 48 hours after these grounds no longer prevail.

shall take and send the fingerprints of the applicant as soon as possible and no later than 48 hours after these grounds no longer prevail.

Or. de

Justification

Technical defects can occur at any time, hence the need for the addition.

Amendment 32

Andreas Mölzer

Proposal for a regulation

Article 11 – paragraph 1

Text proposed by the Commission

1. Each Member State shall promptly take the fingerprints of all fingers of every third country national or stateless person ***of at least*** 14 years of age who is apprehended by the competent control authorities in connection with the irregular crossing by land, sea or air of the border of that Member State having come from a third country and who is not turned back or who remains physically on the territory of the Member States and who is not kept in custody, confinement or detention during the entirety of the period between apprehension and removal on the basis of the decision to turn them back.

Amendment

1. Each Member State shall promptly take the fingerprints of all fingers of every third country national or stateless person ***who cannot prove that he or she is under*** 14 years of age who is apprehended by the competent control authorities in connection with the irregular crossing by land, sea or air of the border of that Member State having come from a third country and who is not turned back or who remains physically on the territory of the Member States and who is not kept in custody, confinement or detention during the entirety of the period between apprehension and removal on the basis of the decision to turn them back.

Or. de

Justification

The burden of proof regarding age should rest with the third country national or stateless person or with members of their families, since in the absence of official documents it is very difficult to assess a person's age accurately.

Amendment 33
Andreas Mölzer

Proposal for a regulation
Article 11 – paragraph 5

Text proposed by the Commission

5. By way of derogation from paragraph 1, where it is not possible to take the fingerprints of such person on account of measures taken to ensure the health of the person or the protection of public health, the Member State concerned shall take and send the fingerprints of the person, in accordance with the deadline set out in paragraph 2, once these grounds no longer prevail.

Amendment

5. By way of derogation from paragraph 1, where it is not possible to take the fingerprints of such person on account of measures taken to ensure the health of the person or the protection of public health **or for technical reasons**, the Member State concerned shall take and send the fingerprints of the person, in accordance with the deadline set out in paragraph 2, once these grounds no longer prevail.

Or. de

Justification

Technical defects can occur at any time, hence the need for the addition.

Amendment 34
Andreas Mölzer

Proposal for a regulation
Article 12 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

Does not apply to English text.

Or. de

Amendment 35
Andreas Mölzer

Proposal for a regulation
Article 12 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Without prejudice to Article 5 data transmitted to the Central System pursuant to Article 11(2) shall be recorded for the **sole** purpose of comparison with data **on applicants for international protection transmitted subsequently to the Central System**.

Amendment

Without prejudice to Article 5 data transmitted to the Central System pursuant to Article 11(2) shall be recorded for the **primary** purpose of comparison with data **which is already recorded in or which will in future be** transmitted subsequently to the Central System.

Or. de

Justification

If third country nationals or stateless persons illegally enter the EU, for practical reasons it should also be possible to establish whether data concerning them have already been recorded in the system. For example, they may previously have applied for asylum.

Amendment 36

Andreas Mölzer

Proposal for a regulation

Article 12 – paragraph 1 – subparagraph 3

Text proposed by the Commission

The Central System shall not compare data transmitted to it pursuant to Article 11(2) with any data previously recorded in the Central System, nor with data subsequently transmitted to the Central System pursuant to Article 11(2).

Amendment

deleted

Or. de

Amendment 37

Daniël van der Stoep

Proposal for a regulation

Article 13 – paragraph 1

Text proposed by the Commission

1. Each set of data relating to a third country national or stateless person as

Amendment

1. Each set of data relating to a third country national or stateless person as

referred to in Article 11(1) shall be stored in the Central System for *one year* from the date on which the fingerprints of the third country national or stateless person were taken. Upon expiry of this period, the Central System shall automatically erase the data from the Central System.

referred to in Article 11(1) shall be stored in the Central System for *ten years* from the date on which the fingerprints of the third country national or stateless person were taken. Upon expiry of this period, the Central System shall automatically erase the data from the Central System.

Or. nl

Amendment 38
Andreas Mölzer

Proposal for a regulation
Article 13 – paragraph 1

Text proposed by the Commission

1. Each set of data relating to a third country national or stateless person as referred to in Article 11(1) shall be stored in the Central System for *one year* from the date on which the fingerprints of the third country national or stateless person were taken. Upon expiry of this period, the Central System shall automatically erase the data from the Central System.

Amendment

1. Each set of data relating to a third country national or stateless person as referred to in Article 11(1) shall be stored in the Central System for *ten years* from the date on which the fingerprints of the third country national or stateless person were taken. Upon expiry of this period, the Central System shall automatically erase the data from the Central System.

Or. de

Justification

If persons who have entered the EU illegally are dealt with more favourably than persons who have applied for international protection, this must be regarded as constituting an unjustifiable instance of unequal treatment. What is more, in practice it is increasingly common for such persons to make repeated attempts to enter the EU illegally, so that it is both appropriate and relevant that data concerning them should be stored.

Amendment 39
Andreas Mölzer

Proposal for a regulation
Article 13 – paragraph 2 – introductory part

Text proposed by the Commission

2. The data relating to third country national or stateless person as referred to in Article 11(1) shall be erased from the Central System in accordance with Article 21(3) as soon as the Member State of origin becomes aware of one of the following circumstances before the **one-year** period mentioned in paragraph 1 has expired:

Amendment

2. The data relating to third country national or stateless person as referred to in Article 11(1) shall be erased from the Central System in accordance with Article 21(3) as soon as the Member State of origin becomes aware of one of the following circumstances before the **ten-year** period mentioned in paragraph 1 has expired:

Or. de

Amendment 40

Andreas Mölzer

Proposal for a regulation

Article 13 – paragraph 2 – point b

Text proposed by the Commission

(b) the third country national or stateless person has left the territory of the Member States;

Amendment

deleted

Or. de

Amendment 41

Andreas Mölzer

Proposal for a regulation

Article 14 – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. With a view to checking whether third country national or a stateless person found illegally present within its territory has previously lodged an application for international protection in another Member State, each Member State may transmit to

Amendment

1. With a view to checking whether third country national or a stateless person found illegally present within its territory has previously lodged an application for international protection in another Member State, each Member State may transmit to

the Central System any fingerprint data relating to fingerprints which it may have taken of any such third country national or stateless person *of at least* 14 years of age together with the reference number used by that Member State.

the Central System any fingerprint data relating to fingerprints which it may have taken of any such third country national or stateless person *who cannot prove that he or she is under* 14 years of age together with the reference number used by that Member State.

Or. de

Amendment 42
Andreas Mölzer

Proposal for a regulation

Article 14 – paragraph 1 – subparagraph 2 – introductory part

Text proposed by the Commission

As a general rule there are grounds for checking whether the third country national or stateless person has previously lodged an application for international protection in another Member State where:

Amendment

There are grounds for checking whether the third country national or stateless person has previously lodged an application for international protection in another Member State where:

Or. de

Amendment 43
Andreas Mölzer

Proposal for a regulation

Article 14 – paragraph 3 – subparagraph 1

Text proposed by the Commission

3. The fingerprint data of third country national or a stateless person as referred to in paragraph 1 shall be transmitted to the Central System *solely* for the purpose of comparison with the fingerprint data of *applicants for international protection* transmitted *by other Member States and* already recorded in the Central System.

Amendment

3. The fingerprint data of third country national or a stateless person as referred to in paragraph 1 shall be transmitted to the Central System *primarily* for the purpose of comparison with the fingerprint data of *persons whose data will be* transmitted *in future or is* already recorded in the Central System.

Or. de

Amendment 44
Andreas Mölzer

Proposal for a regulation
Article 14 – paragraph 3 – subparagraph 2

Text proposed by the Commission

The fingerprint data of such a third country national or a stateless person shall **not** be recorded in the Central System, **nor shall they be** compared with the data transmitted to the Central System **pursuant to Article 11(2)**.

Amendment

The fingerprint data of such a third country national or a stateless person shall be recorded in the Central System **and** compared with the data **already** transmitted to the Central System.

Or. de

Justification

It would be a waste of resources if collected data which might be needed again in the future were not to be stored and compared with all existing data.

Amendment 45
Sarah Ludford, Renate Weber

Proposal for a regulation
Article 24 – paragraph 1 – subparagraph 4

Text proposed by the Commission

A common leaflet, containing at least the information referred to in paragraph 1 of this Article and the information referred to in Article 4(1) of the Dublin Regulation shall be drawn up in accordance with the procedure referred to in Article 40(2) of the Dublin Regulation.

Amendment

A common leaflet, **drafted in clear, simple and understandable language**, containing at least the information referred to in paragraph 1 of this Article and the information referred to in Article 4(1) of the Dublin Regulation shall be drawn up in accordance with the procedure referred to in Article 40(2) of the Dublin Regulation.

Or. en

Justification

The EDPS calls for clear language and the avoidance of legal terminology in its 2008-2009 Activity Report on Eurodac.

Amendment 46
Sarah Ludford, Renate Weber

Proposal for a regulation
Article 24 – paragraph 1 – subparagraph 5

Text proposed by the Commission

Where a person covered by this Regulation is a minor, Member States shall provide the information in an age-appropriate manner.

Amendment

Where a person covered by this Regulation is a minor, Member States shall provide the information in an age-appropriate manner.
The best interests of children shall be the primary consideration of Member States when implementing this Article.

Or. en

Justification

This amendment brings this Regulation in line with the Directive on minimum standards on procedures in Member States for granting and withdrawing international protection which specifies that the best interests of the child should be a primary consideration when implementing the Regulation. Also the EDPS in its 2008-2009 Activity Report highlighted the rights of persons subjected to age evaluations.

Amendment 47
Andreas Mölzer

Proposal for a regulation
Article 24 – paragraph 3

Text proposed by the Commission

3. In each Member State, any person may request that data which are factually inaccurate be corrected or that data recorded unlawfully be erased. The correction and erasure shall be carried out without excessive delay by the Member State which transmitted the data, in accordance with its laws, regulations and procedures.

Amendment

3. In each Member State, any person may request that data ***concerning him or her*** which are factually inaccurate be corrected or that data ***concerning him or her*** recorded unlawfully be erased. The correction and erasure shall be carried out without excessive delay by the Member State which transmitted the data, in accordance with its laws, regulations and procedures.

Or. de

